ART. VII.—1. *Code Civil, suivi de l'Exposé des Motifs sur Chaque Loi présenté par les Orateurs du Gouvernement, &c.* 11 Tomes, 12mo. à Paris. 1809.

2. *Conference du Code Civil avec la Discussion particuliere du Conseil d'Etat et du Tribunat, &c.* 8 Tomes, 12mo. à Paris. 1805.

3. *Code de Procedure Civile.* 2 Tomes, 12mo. à Paris. 1808.

4. *Code Pénal, suivi des Motifs présentés par les Orateurs du Gouvernement, &c.* 2 Tomes, 12mo. à Paris. 1812.

5. *Code d' Instruction Criminelle, suivi des Motifs, &c.* 12mo. 1809.

6. *Code de Commerce.* 2 Tomes, 12mo. 1812.

7. *Les cinq Codes avec Notes et Traités pour servir à un Cours complet de Droit Français; à l'Usage des Etudians en Droit, et de toutes les Classes de Citoyens cultivés.* Par J. B. SIREY. Avocat aux Conseils du Roi, et à la Cour de Cassation. 8vo. Paris. 1819.

WE know not the individual to whose character justice is so little likely to be done, as Napoleon Bonaparte. The child of the French Revolution, he is, by most persons, confounded with its active leaders. The criminality of its horrid excesses fixes on him, as on the most prominent individual, that owed his advancement to that Revolution. It is difficult to induce men to reflect, that the most revolting of these excesses were perpetrated while Bonaparte was at school; and that though he did not bring the Revolution to a close, by restoring the Bourbons, he brought it still more effectually to a close, by crushing its parties, reviving many useful institutions, which it had destroyed, and reorganising the government of the country. It is very easy to charge him with being a tyrant and an oppressor; the changes are easily rung upon his ambition, conquest and devastation of foreign states, the conscription, and the murder of the Duke d' Enghien. It is in no degree our design to defend him from the real or imaginary guilt, imputed in these or any similar charges. We are even free to confess, that we do not think Napoleon possessed the true sentiment of greatness.

He was not a Washington. But he was an Alexander, a Cæsar, a Frederick the Great; as brave as the bravest, and as good as the best of them. He governed by no very good title; but it was a better one, than that, by which any prince in Europe sits on his throne. We presume the most enthusiastic friend of legitimate monarchy does not believe, that if the right to reign of Charles Tenth, George Fourth, or Alexander, were put to the vote of the male population of their several states, of the age of twentyone years and upwards, either of these sovereigns would unite as many unbribed suffrages, as those which proclaimed Bonaparte Emperor. He ruled, and they rule, by the right of the strongest and that alone.

But it is too prevalent an impression, that Napoleon owed his advancement, and his continuance in power, solely to his talent as a *military* chief; that it was merely a military despotism, in which he held France and the continent of Europe enslaved. Fairly analysed and explained, indeed, this impression is just enough. No one can suppose that, but for his military talents and success, he could either have reached or maintained his throne. In a form a little modified, the condition of every prince in Europe is the same. There is not one of the leading sovereigns, who could reign a day, without his standing army. Without the horse guards, London itself would not be habitable. Nor does it seem to us, in point of principle, to matter much, whether the Head of the government be maintained in his power, by an army, fascinated with the splendor of his military qualities—if you please, by the glory and plunder, which that army has acquired under his command; or by a standing army in the *legitimate* sense of the word, a redcoated rabble, hired out of the jails and the brothels. To an American citizen the difference is not worth a straw.

Nevertheless it is true, that Napoleon Bonaparte rose to his greatness by many qualities, besides and above those of the military chieftain; and which, had his fame in war been less, would unquestionably have given him a great name as an administrator, a financier, and a statesman. We presume there is nothing paradoxical in this remark; nothing violently absurd in the intimation, that, because he did not emanate from the Faubourg St Germain, he was therefore as stupid and senseless as the handle of his own sword. We are

willing to grant, that the nature of the part, which he was called to play, led to a far more imposing development of his military, than of his political talents. Much still and secluded meditation is necessary for the formation of a sound politician. This advantage Napoleon did not enjoy; but here again we doubt, whether the noble stir of camps and battles be more unfriendly to true philosophical meditation on politics or on anything else, than the importunate gossipings and small intrigue, that eat up the life of a cabinet politician. The Duke of Marlborough was a truly great man. One sordid vice only weighed down his soul to the dust; and makes it impossible to love, admire, or praise him, without a woful parenthesis. But he was a great man, and more like Napoleon Bonaparte, in the versatility of his greatness, than any other person of the last century or of this. The reader of his life may judge what part of his career was best adapted to form and mature the statesman; the contemptible intrigues in the cabinet of St James, or the wars in Germany and Flanders. The truth seems to be that action,—the responsible control and management of great interests,—is the school of great minds. Small caballing, even in the offices of a department, does not form a good discipline for anything, not even for the business of the department itself.

It is well known to those, who have read any of the late memoirs and journals of Napoleon, that he prided himself on nothing more, than his Code of Law. Mr Butler, in his Reminiscences, observes, that a friend of his had heard Napoleon say, that he could wish to be buried with his Code in his hands. Various anecdotes in the books of O'Meara and Las Cases will readily occur to the memory of our readers, illustrative of the same complacency. Yet we imagine, that it is not every one, who is aware of all the right of Bonaparte to pride himself upon the Code, which bore his name. We suppose, that the prevalent opinion may be, that he at best ordered it to be drawn up, commissioned the lawyers, whom his minister may have designated for the purpose, and finally perhaps honored the manuscript copy with his imperial signature. In short, that in claiming to be another Justinian, he contented himself with doing what Justinian did, and that was nothing.

This, however, is an impression wholly false. The agency of Bonaparte, in the formation of the Code, was of the most efficient kind. Its provisions were discussed in his presence; these discussions were presided over and shared by himself; and the Reports, which were made of them, and which are now before the public, furnish the most satisfactory proof of his real and energetic participation, in the drafting of the Code; and justify the pride, which he took in it, as a monument to his memory. As his character and talents are here presented in a point of view, which to many of our readers may be novel, and to none we trust uninteresting, we propose to devote an article to the subject. We must go back pretty far, for our point of departure, but this we shall despatch in a very few words.

At the earliest periods of our acquaintance with France, we find the country inhabited for the most part by the *Gauls*, a barbarous people, differing altogether, in national stock, from their neighbors beyond the Rhine, the Germans. We know little of the Gauls in France before they were invaded and subdued, and their country made a province, by the Romans. The southern part of Gaul was earliest conquered and reduced to the provincial form; but before the birth of our Savior, the whole country was made to submit to the Roman yoke. It remained in this subjection between four and five centuries, gradually introducing and adopting the language, the manners, the religion, and the jurisprudence of Rome. This was the original introduction of the Roman law into the country.

Gaul was successively and partially invaded and wrested from the Romans by the Visigoths, the Burgundians, and finally and most effectually by the Franks. These barbarous nations found the Gauls in a state of comparative civilisation, as Roman subjects, speaking the Latin language and governed by the Roman law. This was more extensively the case in the southern, than in the northern provinces, in respect to the predominance of the Roman law. So considerable was the difference in reference to this point that, as far back as the history of French jurisprudence goes, the southern provinces were recognised as the *Pays du Droit Ecrit;* and the northern the *Pays du Droit Coutumier*. The causes of this marked difference are but imperfectly known, in the remoteness of

antiquity, and the paucity of historical data. It may have been the consequence of the earlier colonisation of the southern provinces, by the Romans; though that event took place, when the Roman jurisprudence was too much in its infancy at home, to be propagated, as a permanent system, into remote colonies.

The *written law* of the southern provinces, and the *Coutumes* of the northern, were the the basis of the French jurisprudence in the middle ages. On the revival of the study of the Roman law in modern Europe, France was one of the first countries, which cultivated that study, without distinction of the countries of the written and customary law. Alciati was the first distinguished jurist of the new race; and under Cujas in the sixteenth century, the law schools of France became the most renowned in Europe. These two celebrated lawyers,* of whom the first was not a native of France, principally wrote on the Roman law. With equal diligence, if with less renown, Du Moulin, also in the sixteenth century, devoted himself to the *Droit Coutumier*, and among the most famous of his works is his commentary on the *Coutume de Paris*. This work is not without its interest to the well instructed American jurist, inasmuch, to borrow the words of a contributor to our journal for July, 1821, as the *Coutume de Paris* 'formed a sort of supplement to the rest, was applied to all the French colonies, and in that way has become interwoven into the laws of one of the states of this Union.'†

With the expansion and growth of France, at a period somewhat later, a new species of law, under the name of *etablissements*, *édits*, and *ordonnances* grew up. Some of these were the productions of l'Hopital and d'Aguesseau, and to some of them Louis Fourteenth himself is supposed to have been an efficient contributor. Several of these *ordonnances*, being of a considerable length, and of the nature of a compilation of the whole existing law on important points, received in common parlance the name of *Codes*. Such were the *Code Marchand*, the *Code Civile* and the *Code Noir*.

* Alciati was a Milanese, but taught at Avignon and elsewhere in France. An interesting life of Cujas may be found in Hugo's *Civilistisches Magazin* B. iii. s. 190.

† North American Review, vol. xiii. p. 6.

Some of these ordonnances are well known, and in great esteem with the jurists of all Europe and America. The marine *ordonnance* of 1681, rendered classical by the commentary of Valin, is quoted in all our admiralty courts. The *discussions* of the various bodies, by whom these *ordonnances* were compiled, were occasionally published, under the name of *Conferences*, and set the example of the important work, under the same denomination, of which we shall presently give an account. In addition to these sources of the French law, there was a very extensive common law, which rested on the decisions of the courts. No attempt, however, was made at *codification*, on the part of the government; and the important works of Domat and Pothier are either to be considered as new editions of the Pandects, or as elementary treatises of private jurists.

A good deal of the odium against existing institutions in an old and degenerate country, like France before the revolution, naturally falls on the persons connected with the administration of the law, although the law, as a system, may not be remarkably defective. Private justice is said to have been tolerably well administered in France before the revolution. But the venality which existed with regard to all the places of high trust and profit in the administration of justice, and the connexion of the law, with all the oppressive institutions of the state,—the privileges of the nobles, and of the church, and the vicious financial system,—(it being by the arm of the law that these institutions were sustained,) naturally turned a full portion of the popular fury against the legal institutions of the monarchy, at the period of the revolution. Much was necessarily rendered obsolete, by the change in the organisation of the government, and much by the suppression of the nobility and the clergy. Much more also was swept away, in consequence of the new principles, that prevailed on all subjects.

These changes were of course, in the first instance, brought about by separate laws or acts of the various assemblies, which under different names successively exercised the legislative, or rather despotic and dictatorial power in France. It was not long, however, before the notion of a uniform *code of law* suggested itself, not only as necessary, in order to ascertain what, after such an overthrow of former legal institutions

and principles, was the law of the French nation; but also as a work, altogether in the spirit of an age and of a crisis, when men had risen up, after eighteen centuries of discretionary and arbitrary administration, to cut their way with the dagger and the sword to first and simpler principles.

The first laborer in this field was the celebrated Cambacérès. He was a lawyer by profession; as a native of Montpelier, he was a child of the *pays du droit écrit;* and early rose to eminence in the practice of his profession in his native city. In the months of August and October 1793, he presented to the Convention his first draft of a code of law, *projet de code civile;* to which he proposed some modifications in December of the same year. The work was too great for a moment so stormy, and the minds of men were too unsettled for an undertaking, like the establishment of a legal system. Two years after, as a member of the Council of Five Hundred, Cambacérès presented to this body a new project of a code, which was ordered to be printed. This document was compiled from all the acts of revolutionary legislation, from 1789 to 1795. Nothing decisive, however, was done at this time toward the achievement of this great work.

On the overthrow of the Directory by the revolution of the 18th of Brumaire, of the year VIII, (November the 9th, 1799,) the attention of the new consular government was immediately turned to the subject of a code. Bonaparte made it one matter of charge against the Directory, that they had not achieved a work so loudly called for, by the spirit of the age, and the unsettled state of the jurisprudence of the country; and the great interest, which the second consul Cambacérès had taken in the former efforts toward this end, naturally engaged him to pursue the same design. Accordingly, in the course of the first year of the consulate, a third *projet* of a code, containing the ten principal titles, was drawn up, and presented to the government, by a commission of the Council of Five Hundred, at the head of which was Jacqueminot, afterwards a member of the senate under Napoleon.

Such was the state of preparation when, by a consular decree, dated 24th of Thermidor, year VIII, (August 12th, 1800,) a commission was instituted 'to compare the order, which had been followed in the preparation of the *projets* for a civil code, hitherto published, to determine the plan, which

the commission shall think best to adopt, and to discuss the chief principles of civil legislation.' This commission consisted of Messrs Portalis, Tronchet, Bigot-Preameneu, and Maleville; and the minister of justice was joined to their number. The first and the last of the four named were of the *Pays du droit ecrit.*

In the following year, 1801, these commissioners reported a draft of a Civil Code, formed on the materials enumerated, and accompanied with a preliminary discourse, on the principles by which they had been guided. Their draft was in the first instance submitted to the Court of Cassation, (of errors,) and the various courts of appeal; and the reports of the judges of these courts furnished the matter of some improvements in the draft, as it was next submitted to the council of state. In this body, over which the first Consul, Bonaparte, presided, every part of the proposed code was thoroughly discussed; and in one of the works, of which the titles are placed at the head of this article, the *Conference du Code Civil*, is contained a detailed and very carefully prepared report of these discussions. After the article had been discussed in this manner, it was presented to the Tribunate, where it underwent another discussion, and was returned to the Council of State, as adopted, rejected, or amended. In this way five codes of law were successively matured and produced; viz. the *Code Civile*, which was that called by eminence the Code Napoleon; 2. The *Code de Procedure Civile* by which the forms of actions and modes of proceeding, from the tribunal of a justice of peace up to the highest courts, in civil cases, were enacted; 3. The *Code Penal* or Criminal Code; 4. The *Code d'Instruction Criminelle*, or mode of proceeding in criminal actions; and 5. The *Code de Commerce*, or code of law merchant. This whole body of law is often seen printed in one duodecimo volume.

The system thus enacted became the law of France, and of the countries dependent on French power. It was introduced in Holland, in the Confederation of the Rhine, in the kingdom of Westphalia, in Bavaria, in the kingdom of Italy, in Naples, in Spain, and in the various smaller states, that were under the influence of the French. Substantially founded on the principles of the civil law, the common basis of continental

jurisprudence, it was introduced into these various countries, without violently shocking the prejudices and habits of their inhabitants.

That part of the French system, which was most obnoxious to the charge of novelty, and which met with the greatest resistance from public sentiment, in the dependent countries, was the trial by jury. Accustomed, as we are, to the declamation on the oppressive policy of France toward the neighboring states, we are a little startled to find that one of the first *abuses*, which the returning legitimates hastened to do away, was that institution, which we regard as the great safeguard of our liberties. To be candid, however, it may be doubted whether the institution of the jury, as it exists in England and America, could be transplanted into any country of continental Europe; or if it were in form, whether it could exist in its spirit and power, as with us. It is pretty generally conceded, that even in England and America, it is only as a defence against the oppression of the government, that the trial by jury is of any real value. In common matters of civil and criminal law, little probably is gained to the cause of justice, by a jury trial. A good court would be a safer and a wiser resort. But it is better a thousand fold to encounter, in their most aggravated form, the ignorance, the obstinacy, the caprice of juries on common questions of law, than to have the lives and properties of the citizens, in times of political excitement, in the hands of the government. Now there is not a government on the continent of Europe, where this bulwark of the jury would be allowed to operate, as it does in England and America. The manner, in which the crown lawyers are so constantly baffled in England, in their attempts to procure conviction in cases of libel, blasphemy, &c. are the standing astonishment and wonder of continental governments; a mystery rather than a stumbling block; a thing, which so far from imitating, they do not understand. We have seen a German judge puzzle himself as much, upon the little point of law, which requires the reading of the riot act, as a Chinese does, at being obliged to eat with a knife and fork. Accustomed as the continental jurists are to the pure Latin, in which their own codes are preserved, the very terms of a *habeas corpus* strike them with scarcely less disgust, than they did the Persian ambassador in London,

when told, that a supposed reluctant inmate of his *harem* was to be emancipated by that ill named writ.

But to return to the Code Napoleon, the downfal of the emperor was the signal for its disuse in the foreign dependencies of France; but in that country itself it was so strongly rooted, as to sustain itself. By a royal ordonnance, of July 17th, 1816, it is declared,

'We are too well convinced of the evils of a fluctuating legislation in a state, to think of a general revision of the five codes, which were in vigor in our kingdom, at the time that our constitutional charter was granted. We reserve to ourselves only to propose particular laws, in order to reform such things as admit improvement; or in which time and experience shall have discovered imperfections. But although reforms of this kind can be the work only of time, and the fruit of long meditations, it is indispensable to suppress, from the present moment, those denominations, expressions, and formulas in the different codes, which are not in harmony with the principles of our government, and which recall the recollection of times and circumstances, of which we would efface even the recollection.'

In consequence of this decree, the various names and titles belonging to the imperial government, were erased, and the appropriate ones of the royal government, introduced in their stead. At various subsequent periods, laws have been enacted, considerably modifying, or wholly changing, several important provisions of the Code Napoleon. One of the most important provisions of that Code, which has been repealed, is that by which divorce was admitted. Serious modifications in the law of succession, are at the present time under consideration.

It is next in order, to give some account of the works mentioned at the head of our article. The first is called the *Code Civile*, and is in ten volumes duodecimo, with an eleventh of supplement. We cannot better convey an idea of the contents of this work, than by quoting the title entire;

'*Code Civile*, followed by an exposition, on the part of the Government speakers, of the grounds of each law; by reports made to the tribunate, in the name of the committee of legislation; by the opinions expressed in the course of the discussion; by the discourses pronounced before the legislative body by the speakers of the tribunate; and by an

analytical table and index of the contents, both of the Code and the discourses.'

By far the greater part of the volumes is filled with this subsidiary, explanatory, and, we ought to add, highly instructive matter. We know not in what quarter, more can be learned of continental and general law; where a more ample collection of important facts, sound reasonings, ingenious views, and powerful illustrations are to be found, than in the nine last volumes of the ten, of which this work is composed. The Code itself, the legal system of the great French Empire, compiled out of the 'cartloads' of their ancient jurisprudence; and found, by a twenty years' experience, adequate to the purposes of the courts, in the populous kingdom where it is administered, is but one duodecimo volume. As this is undoubtedly the most important work of the kind, since the Institutes of Justinian, and is probably not much known in this country; we shall enter into a brief analysis of it.

The whole Code is comprised in 2281 paragraphs, which are numbered, for the greater facility of reference, and which, to use a familiar but satisfactory comparison, are, upon an average, about as long as the verses of the bible. The work is divided into three books; each book into a certain number of titles; and each title is comprised in one or more chapters. A preliminary title, 'on the publication, effects, and application of the law in general,' precedes the whole.

The First Book is entitled 'of Persons;' and, in *eleven* titles, treats, 1, of the enjoyment and privation of civil rights; 2, of civil acts, such as the registry of births, marriages, and deaths; 3, of domicil; 4, of absentees; 5, of marriages; 6, of divorce; 7, of the relations of father and son; 8, of adoption and officious guardianship; 9, of the paternal power; 10, of minority, guardianship, and emancipation; 11, of majority, of guardianship of persons of age, (interdiction,) and judicial counsel.

The Second Book is entitled 'of property and the different modifications of ownership;' and, in *four* titles, treats, 1, of the distinction of property into real and personal (immeubles et meubles;) 2, of ownership; 3, of usufruct, of use and habitation; 4, of servitudes (easements.)

The Third Book is entitled 'of the different modes of acquiring property;' and, in *twenty* titles, treats, 1, *of*

successions; 2, of donations *inter vivos* and testaments; 3, of contracts, or conventional obligations in general; 4, of engagements formed without a convention; 5, of the contract of marriage, and the rights of the parties respectively; 6, of sale; 7, of exchange; 8, of the contract of letting to hire; 9, of partnership; 10, of loan; 11, deposit and sequestration; 12, of contracts connected with chance; (*aleatoires*, such as wagers, and life rents;) 13, of power of attorney; 14, of becoming security; 15, of transactions; 16, of bodily duress in civil cases; 17, of furnishing security; 18, of mortgages; 19, on taking and selling by execution; 20, of prescriptions.

Such are the general titles of the Code. Most of them being comprehended in several chapters, in which the different subdivisions are treated, of which the titles are susceptible, it is plain that a full conception of the contents of the Code cannot be formed, without giving the topics of the several chapters. This, however, would draw us into a detail, which our limits do not admit.

We have already hinted, that the remaining nine volumes of the collection contain discourses on the subject of the various titles and provisions of the law, pronounced either by the orators of the government, or of the Tribunate, pending the discussion of the laws. These discourses contain a history of the point of law in question, as it formerly stood in different parts of France, or reasonings in favor or against the new provision; and the collection forms a most interesting repertory to the student of general jurisprudence. A very well contrived system of references, guides you, in the first volume, at every part of the Code, to those discourses in the subsequent volumes, where that part is explained or treated. The eleventh volume, or supplement, is devoted to a collection and abstract of all the laws passed since 1789, which are necessary to the understanding of the Code, or immediately connected with its provisions. It affords an impressive lesson of the use, which the PEOPLE would make of the sovereign power in Europe, were they entrusted with it, to find the first words of this collection, under date of August 4, 1789. 'The National Assembly entirely destroys the feudal regime,' &c.

The next work to be briefly described, is the '*Conference on the Civil Code*, with the private discussion of the Council

of State, and of the tribunate, before the final draught of each provision of law.' This work is drawn up with great care, and in a manner to throw much light on the nature of the system, to whose illustration it is consecrated. It first presents each article in the Code, as it finally was adopted, printed in a more conspicuous type. Next follow the different forms and draughts of each article proposed and discussed in the Council of State, with the report of those discussions. To this succeed the observations made in the Section of Legislation of the Tribunate, on each article as proposed in the official conferences with the Council of State. In this manner, the history of each article, which was matter of debate, is recorded ; and ample means are afforded of ascertaining its precise sense, by comparing the different modifications through which it passed to its final form. We cannot better give an idea of the nature of this work, than by presenting our readers with a considerable extract from it. For this purpose, we select the first discussion, in the first volume, on the preliminary title 'of the Publication of the Laws.' Our limits will oblige us to abridge the remarks of some of the Counsellors. Those of Napoleon we shall present entire.

PRELIMINARY TITLE.

Of the Publication, of the Effects, and of the Application of the Laws in general.

(Decreed the 14th of Ventose, year XI. Promulgated the 24th of the same month.)

ARTICLE FIRST.

The laws are binding throughout the French territory, in virtue of the promulgation made of them by the First Consul.

They shall be binding in every part of the Republic, from the moment that it is possible their promulgation should be known.

The promulgation made by the First Consul shall be considered as known in the department, which contains the seat of government, one day after the promulgation, and in every other department after the same interval, with the addition of as many days as there are ten myriameters of distance (about sixty miles) between the city, where the promulgation shall have been made, and the capital of the department.

DISCUSSION IN THE COUNCIL OF STATE.

First Draught. (Session of the 4th Thermidor, year IX.)

'The Laws shall be binding throughout the republic, fifteen days after the promulgation by the first Consul.

'This delay may, according to the exigence of the case, be modified by the law, which is the subject of publication.'

[The reporter of this first draught, whose name is not given, opens the discussion, with alleging the general advantages of having a fixed period from the publication of the law, after which it shall be considered as known throughout the state. His remarks are too long to be given. He is followed by Napoleon.]

The First Consul remarks, that already the constitution suspends for ten days the promulgation of the law; to add fifteen days more to this term, would be often to fail in the very object which the legislator has in view, particularly in the case of repressive laws, or others, whose execution does not admit delay.

The Consul Cambacérès extends the same objection to the civil laws. There are those, which might be eluded in the space of time which would elapse, between the moment of their being decreed and that when they became binding.

The C. Portalis replies, that as to repressive laws, the remedy of this difficulty is found in the article as reported, which admits of curtailing, in special cases, the general term of delay.

As to the difficulty in regard to civil laws, it must exist under any arrangement.

The First Consul says, that the section proposing the article, seems to lose sight of its own principles, when, contrary to the provisions of the Roman law, and the unanimous opinion of the Jurists, who have been consulted, it holds that the law is not binding as soon as it is known.

The C. Boulay objects, that the case is the same under the existing system, since the law does not become binding but from the day, when the despatch of it has been entered on the Register of the Department.

The C Rœderer says, that the solution of this question is to be sought in the Constitution, which provides, article 41, that promulgation shall be made by the First Consul. The word *promulgation* intends *publication.* It is then the First Consul alone who publishes. The registering is not necessary to the promulgation, which belonging solely to the First Consul, cannot be shared by a Prefect of Department. The registering by the Prefect, is a mere act of record, which is not designed to make known the law. But this registering is not known the same day in the whole extent of the prefecture, any more than the promulgation of the First Consul is known the same day in all the Depart-

ments. What then is it necessary to add to the promulgation, in order to assure the law's being known? An interval of time, in which the promulgation may be presumed to come to the knowledge of the citizens. This is the course followed in England and America. Nevertheless, as it would be ridiculous to establish a tarif of distances, a general reference could be had to them, and it might be provided that ignorance of the law should not be pleaded at the seat of government, on the day of promulgation, nor in other places after an interval of five days for every seventyfive miles.

[*The C. Tronchet* spoke next, somewhat at length in defence of the draught as reported, proposing, however, to fix a different period, after which, the law should be binding on the colonies from that, which should be adopted for the mother country.]

The C. Boulay proposes to leave with the government the right of fixing the epoch, when the law shall become binding in each colony.

The First Consul observes, that the laws may be declared binding in the colonies, from the day of their arrival. He asks why, in general, the laws should not be held binding, from the day they are presented at a session of the courts, by the officer of the government.

The C. Rœderer observes, that this would be to revive the old form of registration.

The First Consul persists in thinking, that it would be derogatory to the majesty of the national will, not to render the laws obligatory, till twentyfive days after they are known.

The C. Boulay says, that if the law became binding only from the time when it was presented by the officer of the government, it would be in the power of that functionary to retard its execution.

[*The Minister of Justice* supports the last suggestion of Napoleon.]

The C. Cambacérès remarks, that the inconveniences thought to be incident to the present mode of publishing the laws, had not, in fact, arisen. The only question, which has been started, is, whether the courts are bound to decide according to a law, before having received it. The change proposed in the existing mode of publication is, therefore, without ground. Why deprive the person, who lives in a department where the law is known, of the right of using it?

The C. Regnier thinks, that the French being equal in their rights, they ought all to be subjected at the same moment, to the empire of the law, whether it be rigorous or favorable.

The First Consul observes, that the principle of equality of rights is respected, if all the French are equally bound by the law, from the moment that it reaches their place of habitation.

[*The C. Emery, Berlier*, and *Tronchet*, discuss these principles at considerable length. We pass over these remarks, as not particularly interesting.]

The First Consul maintains, that the plan reported by the Section, would embarrass the execution of the law. It would be constantly necessary to debate upon the time when the law should become binding; the general period would be preserved, only in leading laws of a civil nature, and would be disregarded as to all others. There are few laws, whose execution ought to be delayed twentyfive days; and when the case is very urgent, the government ought to be able to accelerate the execution of the law, by despatching extraordinary couriers.

[*The Minister of Justice*, and the *C. Portalis*, adopt and oppose respectively, the sentiments of the First Consul.]

The First Consul proposes to regard the capital of each Department as the central point, from which the law ought to be published; and to fix the delay at the rate of a day for fifty miles, reckoning from the city where the law is promulgated. Nevertheless, as the presumption of notoriety recognises the principle, that, where the law is known, it is binding, the government, in urgent cases, might abridge the delay, by despatching extraordinary couriers with the law.

The C. Bigot Preameneu, thinks an actual (materielle) publication can alone give the government assurance, that it has fulfilled the duty of making known the law. How else could the Court of Cassation reverse judgments contrary to a law, if it be uncertain whether said law were known to the court whose judgment is reversed?

The First Consul puts to vote the question, whether the laws shall not be binding, till after a general delay. He invites the Citizens, Reporters of the Code, to vote with the Counsellors of State.

The Council rejects the proposition of establishing a uniform and general delay in the execution of the laws.

Second Draught. (Session of the 14th Thermidor,* year XI.)

'The laws shall be binding throughout the continental territory of the Republic, reckoning from their promulgation by the First Consul.

'In the jurisdiction of the Court of ————, after a delay of ———— days.

'In the jurisdiction of ———— after a delay of ————.'

The C. Defermon observes, that it would be more simple to regulate the delay by distances of twentyfive leagues.

* This second discussion, it appears from the dates, followed ten days after the first.

The Minister of Justice approves the first part of the article, but rejects the specification of each jurisdiction, as too detailed for a law.

The First Consul says the law might be declared binding at the seat of government, on the day of promulgation; and in the other departments, after a delay calculated at the rate of an hour per league, assuming the chief city as the point of distance, so that when the law shall be known there, it shall be reputed to be known throughout the department. This mode of publication, would have the advantage of being independent of all territorial divisions. It would not be necessary to modify it, in case of any change in the existing divisions.

The estimation of the distances should be fixed by an order. This measure would put it in the power of the government to modify the arrangement of the distances, whenever natural obstacles, such as the overflowing of a river, the fall of a bridge, or other like causes should interrupt the ordinary communications.

The C. Tronchet objects, that there are chief towns of departments so near Paris, that the law would become binding in them, two hours after the promulgation, that is, in a space of time evidently too short for the law to be known throughout the department. To escape this inconvenience, the Citizen Tronchet proposes to fix, at the beginning, a uniform and unvariable delay of ten days, and then to add a second delay, calculated upon the distances.

The First Consul says, that the uniform delay might be fixed at twentyfour hours.

The C. Maleville considers the draught of the section as perplexed. He proposes to amend it as follows.

'After the laws shall have been promulgated, they shall become binding in the following periods of time;'——

The C. Lacuée wishes, that the article should make provision for the publication of the laws, in the departments not continental.

The First Consul says, that this point should be referred to the order, which the government may be authorised to make on the subject.

The Article of the Section is rejected. *The First Consul* directs the Section to prepare a new article, according to the amendments proposed.

Third draught. (Session of the 4th* Fruct. Year IX.)

'The laws shall be binding throughout the French territory, in virtue of the promulgation made of them by the First Consul.

'They shall be binding in every part of the Republic, from the moment that it is possible their promulgation should be known.

Twenty days after the last session

'The promulgation made by the First Consul shall be considered as known throughout the jurisdiction of the appellate court of Paris, twentyfour hours after its date; and throughout the jurisdiction of each of the other tribunals, after the expiration of the same interval, with the addition of as many hours as there are myriameters between Paris and the cities respectively, where these courts meet.'

The C. Fourcroy observes on this article, that the delay of an hour *per* myriameter is evidently too little for the continent, and wholly out of the question for the colonies.

The C. Regnaud, (de St Jean d'Angely,) proposes to extend the delay to two hours, the myriameter being about twice the old league.

[This discussion is prolonged for some time, but it would appear that the First Consul was not present, the questions being put by Cambacérès.—The article, with further amendments on the last stated draught, was reported to the tribunate for their observations, which resulted in its final adoption, as given at the head of this extract.]

We have made this long and possibly dull extract because, without such an extract, it is impossible to form an accurate idea of the agency of Bonaparte in the preparation of the Code. Our readers have now only to consider, that the debate we have quoted is not a holiday performance, but that an entire code of law was discussed in his presence, and with as much participation in the debate; and they will then have an idea of the astonishing versatility of his powers.—The *Conference* consists of eight volumes.

The next work to be briefly described is the *Code de Procedure Civile,* in two volumes; the first of which contains the mode of proceeding before all the tribunals, from that of a justice of peace up to the highest court of appeal. The second volume contains the reports and statements of the various counsellors of state and tribunes, of the reasons and motives of the several legal provisions relative to the forms of process. In the first volume are some long decrees of the Emperor, reorganising the Council of State, which throw much light on this, the most complicated and important department of the system of the French government. The Council continued during the reign of Napoleon to undergo modifications; and under the royal government also has experienced some changes. It is not easy for a foreigner to comprehend, in all their extent, the details of the organisation and jurisdiction of

the Council of State. A chapter of sixty closely printed octavo pages is devoted to the subject, in a convenient work, which we shall presently mention more particularly. *Les Cinq Codes avec Notes et traités, par J. B. Sirey, Paris*, 1819.

The *Code Pénal*, or code of criminal law, which we next mention, is not unknown to the American public. An entire translation of it, by a very accomplished scholar and jurist, Mr Duponceau, was inserted in the Appendix to the American Review, vol. ii. for 1811. A translation of it was also commenced in the United States Law Journal for January 1823. A brief analysis will therefore suffice.

The *Criminal Code* is contained in *four* books. Book First treats of 'punishments in criminal and correctional cases, and of their effects.' The object of this book is simply to ascertain and describe the nature and effects of the various sorts of punishments. Punishments are of four kinds, according to this Code; 1st, those which are corporal and ignominious, viz. death, hard labor for life, transportation, hard labor for a limited time, and imprisonment. Branding and confiscation of property may be inflicted, together with corporal punishment, in cases determined by law; 2d, those which are ignominious, viz. the pillory, banishment, deprivation of the rights of citizenship; 3d, correctional punishments, viz. confinement for a limited time in a house of correction, deprivation for a limited time of certain rights of citizenship, or of civil or family rights, fines; 4th, punishments inflicted by the police, viz. small fines, imprisonment from one to five days, and the confiscation of certain objects seized.

Book Second treats the subject of 'persons punishable, excusable, or responsible for crimes or offences.'

Book Third treats 'of crimes, offences, and of their punishments,' under two general titles; 1st, that of crimes and offences against the commonwealth; 2d, that of crimes and offences against individuals. This is, of course, the most important book, containing the substance of the criminal law of the country. Many of its provisions coincide with those of a criminal code, which was adopted in the year 1791. The punishment of death is always inflicted by the guillotine. No mutilation takes place, but in case of parricide; in the punishment of which the right hand is cut off, immediately

before decapitation. Forgery is punished by imprisonment for a term of years.

The second volume, of which the collection called the *penal code* consists, contains various reports and discourses illustrative of the grounds and reasons of the laws. The most ample indices facilitate the reference to every matter treated in this code.

Intimately connected with this work, and enacted before it, is the *Code d'Instruction Criminelle*, or code regulating the mode of procedure in all criminal cases. An ample notice of this work is contained in the Edinburgh Review, vol. xvii. p. 88. A minute account of the mode of constituting a jury, of presenting a cause to them, and receiving a verdict from them, is contained in this article. We may add, however, to the account in the Edinburgh Review, a word respecting the unanimity of juries, and the manner in which their verdict is adopted by the court.

If the jury be equally divided their verdict is, *not guilty.* If the prisoner is found guilty of the principal fact, by a bare majority of the jury, the judges shall deliberate on the question; and if the opinion of the minority of the jurors is adopted by the majority of the judges, in such a way that on combining their voices, the number shall exceed that of the voices of the majority of the jurors combined with those of the minority of the judges, then the prisoner shall be declared not guilty. If, besides this case, the judges are unanimously dissatisfied with the verdict, they may order a new trial by another jury.

The *Code de Commerce* is the last of the five codes. An entire translation of it, with very valuable explanatory notes, is also to be found in the American Review, vol. ii. 1811, and is sufficiently commended in the name of the translator and annotator, Mr Duponceau.

The Code of Commerce is comprised in four books, with a supplement. The FIRST BOOK, under eight titles, treats the subject of commerce in general. The SECOND BOOK treats marine law, shipping, insurance, &c. The THIRD BOOK treats of failures and bankruptcies, of which the latter, by the usage of the French language, are understood to be fraudulent. This branch of law is contained in one hundred and seventyeight articles or *versets*. Several highly valuable

essays or discourses of the government lawyers and counsellors of state, relative, among other subjects, to the laws of failure and bankruptcy, may be found in the second volume of the *Code de Commerce.* The supplement to the code contains, among other matters, a law fixing the rate of interest, with a discourse upon this point by the Counsellor Jaubert.

Such is the enumeration of the five codes, and such a brief account of them, and the works illustrative of them, named at the head of our article. We ought not, however, to pass without notice the edition of M. Sirey, which comprehends them all in one volume, together with an ample collection of principles from adjudged cases.

We had intended to make a few remarks on the French Code, as an object of imitation for this country, but the subject of Codification is much too extensive and important to be treated in a few pages. It is a subject, which has lately engaged, and still engages, a good deal of attention in other countries, as well as in our own. A classical work was written, a few years since, by Professor Savigny, of Berlin, esteemed one of the first civilians in Germany, entitled, *On the Vocation of this Age to make Codes of Law.* This celebrated author is decidedly opposed to the compilation of a Code for Germany, and in this opinion he is followed by Mr Hugo, of Göttingen, and in general by the civilians of the school, of which Messrs Savigny and Hugo are considered as the heads. Some of the grounds, on which lawyers of England and America oppose a Code, are of course inapplicable to the question as discussed in Germany; and the extraordinary superiority, which the continental jurists claim for their law, as resting on a definite written base, like the *Corpus Juris*, over what they consider the vagueness and uncertainty of the common law, seems inconsistent with the zeal, with which the same jurists now oppose the preparation of a new Code.

The expediency of *Codifying* (for the ill sounding term is of convenient use) in England and America, is unquestionably one, on which opinions are divided; not only a question, like Sir Roger de Coverley's, where much may be said on both sides; but a question on which different opinions would be entertained, after it was reduced to its simplest and most abstract statement. We are inclined, however, to think that

it is nevertheless a question, on which men would think much more nearly alike than they now do, if they would begin by understanding each other precisely, as to the terms of the controversy; the proposed nature of the work, of which the expediency is discussed, and the sort of advantage to be expected from it. The *thing* Codification is certainly as old as Moses; the *word* has grown into use, we believe has been coined, within a few years, in the progress of the lucubrations of an individual, whose reputation and character we consider too enigmatical to be rashly pronounced upon. We mean of course, Mr Bentham. This gentleman, in the course of his life, has proposed to write Codes of Law for Russia, for each of the United States, and very lately for Greece. If the question then to be settled is, whether it is expedient that the governors of the states should accept the proposals, which some time ago were made to them individually by Mr Bentham, to codify their law, we suppose the question would be settled with equal promptitude and unanimity. But when the question is thus stated, it is plain that it is a question not as to the expediency of codifying, but as to the mode of doing it, and the probability, that it would be well done for us by a visionary foreign philosopher, as much distinguished, at least, for his zeal in party politics, as for his learning in jurisprudence. If the question, on the other hand, be, whether it were not to be wished that Lord Bacon had accomplished the digest of the law, which he proposed; whether it were not desirable that Sir Edward Coke's works were, in reality, what Blackstone says 'he is pleased to call them, though they have little warrant to the title,' Institutes of Law; or if the question be, whether a valuable service were rendered to the Roman law, by the Institutes and Digest of Justinian, and issue were joined on these points, though the question is still more or less personal and local, as to the mode and occasion, yet we apprehend the answers would be different from those, which would be made to Mr Bentham's proposal. There is probably no man, who has ever studied Lord Coke's four books of Institutes, that has not uttered or conceived the wish, that this most learned jurist had, with logical severity, followed the plan, which that name would seem to indicate.

So with regard to the advantages, which would result from a code, a little previous candid explanation would no doubt

go far, to reconcile judgments seemingly opposed to each other. It is sometimes intimated, that the friends of codification expect to destroy litigation, by making the law, on all points, so clear that no question could possibly arise. We know not what Mr Bentham, or M. Dumont, the great organ of his communications, expects to effect, but if this were the proposed and expected advantage to result from *Codification*, it would certainly be a work to be left to the jurists of Laputa. The least experience, the least reflection is sufficient to convince any one, that litigation does not, in a majority of cases, grow out of the uncertainty of the law. It is much more frequently occasioned, no doubt, by the uncertainty of the application of undoubted rules of law to complicated and unexpected trains of fact and circumstances. But human passion and human interest are the great sources of litigation, from which it must always flow, apart from the greater or less uncertainty of the law or the facts. Sir Edward Coke, we believe, says, that not more than two points of law were called in question, during his practice in the Courts. Many thousands of lawsuits were no doubt prosecuted in this period.

If then codifying is not to destroy litigation; what good is it to do, or is it expected to do? As we are not now discussing the subject itself, we shall not, of course, undertake to answer this question in any detail. We would only say, that the good effects of codifying would be precisely the same in kind, and differing in degree according to circumstances, with those of every other process, undertaking, or work to facilitate the study and practice of the law. If the day before Sir William Blackstone sent his Commentaries to the press, the question had been started, whether their publication would destroy or diminish litigation, or more generally, whether it would do any good, the answers would probably have been as various, as those now made to the question of codifying. We are told, that when the first copies of Blackstone's Commentaries reached America, (whither, by the way, Mr Burke tells us, nearly half the early editions were sent,) James Otis, in possession of one of them, rushed into open court, in the fulness of admiration, and declared, that if that book had been written earlier, it would have saved him years of labor. A code of law properly prepared, stating in

as plain a form as it can be stated, what the law of the land is, on every point, would produce, in a greater or less degree, the same saving of time, which James Otis ascribed to the publication of the Commentaries. To that small portion of litigation, which arises from an uncertainty on the part of clients as to what the law is, it might gradually be expected to afford a remedy. It would also go far to enable persons, not lawyers, to acquire a liberal knowledge of the law of the land. Fortescue more than three centuries ago said, that this could be done in a year, without the neglect of other employments. It must, however, be a very superficial knowledge, that could be obtained on those terms.

A code of law may be conceived of in two forms; that of a work, like those of Justinian or Napoleon, an authoritative body of law, enacted by the legislative power of the state; or that of a mere learned production of a private jurist, as the work for instance of Domat. The questions of expediency would receive different answers, no doubt, according as one or the other species of code was projected. The severest friend of the system as it is, would probably welcome the appearance of a work, in which every rule, maxim, and injunction of English or American law should be propounded in natural order, and in the simplest form, by a jurist like Coke or Mansfield. What good the work would do, would depend on the use it was put to, and the hands into which it fell. To one man it would be invaluable, to another worthless. Some it would assist and some it might mislead. But all this may be said of every other book ever written, on the law, or on any other subject. We may add, that approaches to a work of this kind have been frequently made and with entire success. Every elementary treatise on a title of law partakes of the nature of such a work, and some attempts at this private codifying of the common law, in the strictest form, have also been made.

But the more common understanding of a code of law is, that of a body of law compiled and enacted by the legislative power, like the Code Napoleon. Would this be useful? This is the great question, on which we do not mean to enter. We think ourselves, knowing that our opinion, as such, carries no weight with it on the point, that it would be highly useful. We see no reason why a work, which we

have supposed would be of universally admitted utility, as a private enterprise, would diminish in utility, in consequence of being drawn up with the greater deliberation and solemnity, necessary to a legislative ordinance. The work of course would be prepared by the ablest lawyers and judges of the day, who are authorised on every point to decide what the law is; and would receive the sanction of the legislative body, which is authorised on any point to declare what the law ought to be, within the limits of the Constitution. Moreover, approaches have been made even in England and America to codifying, in this sense; and further approaches are daily making. Every consolidated act is of the nature of a chapter of a code. Two such chapters in the code of the United States have passed the House of Representatives the last winter; one merely administrative, the other in the highest walks of penal jurisprudence. We allude to the Post Office bill, and to Mr Webster's law against certain crimes and misdemeanors. Every bankrupt act is an important section of a code. Lord Ellenborough's Statute, 43 Geo. III. c. 58, was such a section, and scarcely a session of Parliament or of Congress passes without one. The work, therefore, is constantly doing in part, and irregularly? Why not do it in the form of an entire perfect system? But it is idle to make *remarks* on a subject, which volumes would not exhaust, and we therefore drop it.

ART. VIII.—1. *An Oration pronounced at Cambridge, before the Phi Beta Kappa Society, August* 27, 1824. By EDWARD EVERETT. Published by Request. 8vo. pp. 67. Boston.

2. *An Oration delivered at Plymouth, December* 22, 1824. By EDWARD EVERETT. Boston. 8vo. pp. 73. Cummings, Hilliard and Co.

As the occasion on which the first of these orations was pronounced, in presence of the Nation's Guest, and before an assemblage of eminent persons from all parts of the Union, was one of rare occurrence and deep interest, so the subject